

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 245
CIGARETTE TAX STAMPING

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HRS §245-1**§18-245-1****Definitions.** As used in this chapter:

“Cigarette package” means an individual sealed package of 20 cigarettes originating from the manufacturer and bearing the health warning required by law.

“Department” means the department of taxation.

“License” means a license granted under chapter 245, HRS, that authorizes the holder to engage in the business of a wholesaler or dealer of cigarettes or tobacco products in the state.

“Licensee” means the holder of a license granted under chapter 245, HRS.

“Minor” means a person under the age of eighteen.

“Peddle” means the act of any person, including employees or agents, who engage in business in one locality or traveling from place to place, whether on foot, from a stand, wagon, pushcart, or motor vehicle carrying, conveying, or transporting goods, wares, food, merchandise, or other kinds of property and offering or exposing the same for sale, or making sales and delivering, any goods, wares, food, merchandise, or other kinds or property to purchasers.

“Sale” includes every act of selling.

“Sell” means to:

- (1) Solicit and receive an order for;
- (2) Have, keep, offer or expose for sale;
- (3) Deliver for value or deliver in any other way than purely gratuitously;
- (4) Peddle;
- (5) Keep with intent to sell; and
- (6) Traffic in.

“Stamp” means a stamp printed, manufactured, or made by authority of the department, as provided in chapter 245, HRS, that is issued, sold, or circulated by the department, that is placed on the bottom of a cigarette package, and by the use of which designates that the tax levied under chapter 245, HRS, has been paid.

“Stamping indicia” means any indicia or mark made by authority of the department, as provided in chapter 245, HRS, that is issued, sold, or circulated by the department, that is placed on the bottom of a cigarette

package, and by the use of which designates that the tax levied under chapter 245, HRS, has been paid. [Eff 12/16/2000](Auth: HRS §245-42)(Imp: HRS §§245-1, 245-42)

HRS §245-23 §18-245-2 Preparation and sale of stamps. The department shall prescribe, prepare, and furnish stamps of such design, specifications, denominations and quantities as may be necessary for the payment of the tax imposed by section 245- 3, HRS, and may provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. In lieu of stamps, the department may also allow the use of other stamping indicia implemented through the use of computers or machines or any other device. [Eff 12/16/2000](Auth: HRS §§245-23, 245-42)(Imp: HRS §245-23)

HRS §245-22 §18-245-3 Method and manner of affixing stamps. Stamps or stamping indicia shall be securely affixed to the bottom of each cigarette package in such a manner that the stamps or stamping indicia are clearly visible, legible and complete. [Eff 12/16/2000](Auth: HRS §§245-22, 245-42)(Imp: HRS §245-22)

HRS §245-22 §18-245-4 Adherence of stamps. Stamps or stamping indicia shall be affixed in such manner as to adhere securely to the bottom of each cigarette package. If the cigarette packages are wrapped in or covered by some substance to which the stamps or stamping indicia do not readily adhere, such wrapper or covering must be roughened or treated so that stamps or stamping indicia will adhere securely thereto.[Eff 12/16/2000](Auth: HRS §§245-22, 245-42)(Imp: HRS §245-22)

HRS §245-33 §18-245-5 Refund or credit for unused stamps. The department will refund or credit to a licensee who purchased stamps the denominated value of any unused stamps which are returned to the department or the financial institution designated to sell stamps, in accordance with section 231-23, HRS, provided the licensee provides a receipt for the purchase of the stamps. [Eff 12/16/2000](Auth: HRS §§245-33, 245-42)(Imp: HRS §245-33)

HRS §245-32 §18-245-6 Refund or credit for cigarettes shipped outside of the State for sale or use outside the State. (a) Whenever any cigarette packages upon which stamps have been placed have been shipped to a point outside the State where they are resold or otherwise consumed or used outside the State, the licensee shall be entitled to a refund or credit of the denominated value of stamps placed on such cigarette packages, in accordance with section 231-23, HRS.

- (b) To receive this refund or credit, the licensee shall provide:
 - (1) Evidence that stamps were placed upon the cigarette packages; and
 - (2) Either a certificate from the entity to whom the cigarette packages are resold or received for use or consumption, prescribed by the department, or alternative documentation which establishes that the licensee has shipped the cigarette packages to a point outside the State where they will be resold, consumed, or used outside the State. [Eff 12/16/2000](Auth: HRS §§245-32, 245-42)(Imp: HRS §245-32)

HRS §245-3 §18-245-7 Refund or credit for casualty loss. (a) The department shall refund or credit to a licensee who purchased stamps, the denominated value of stamps placed on cigarette packages which thereafter become the subject of a casualty loss deduction allowable under chapter 235, HRS, in accordance with section 231-23, HRS.

- (b) To receive this refund or credit, the licensee shall provide:
 - (1) Evidence that the stamps were placed upon the cigarette packages; and
 - (2) The state income tax return which evidences that these cigarette packages subsequently became the subject of a casualty loss deduction allowed under chapter 235, HRS. [Eff 12/16/2000](Auth: HRS §§245-3, 245-42)(Imp: HRS §245-3)

HRS §245-11 §18-245-8 Requirements for refund or credit. No credit or refund shall be allowed under sections 18-245-5, 18-245-6, or 18-245-7, unless the claim for the credit or refund is filed as follows:

- (1) If a monthly return is timely filed, or is filed within five years after the date prescribed for filing the monthly return, then the credit or refund must be claimed within five years after the date the monthly return was filed or the date prescribed for filing the monthly return, whichever is later.
- (2) If a monthly return is not filed, or is filed more than five years after the date prescribed for filing the monthly return, a claim for credit or refund must be filed within:
 - (A) Five years after the payment of the tax; or
 - (B) Five years after the date prescribed for the filing of the monthly return, whichever is later.

[Eff 12/16/2000](Auth: HRS §§245-11, 245-42)(Imp: HRS §§245-32, 245-33, 245-3)

HRS §245-25 §18-245-9 Authorization of designee to purchase stamps for licensee; revocation of authorization. (a) The department shall sell stamps only to persons holding licenses as required by section 245-2, HRS, or their designee. A designee may purchase stamps provided that:

- (1) Written authorization is made naming the designee and identifying the designee by means of a signature or any other means of identification the department or designated bank may require;
- (2) The written authorization and means of identification as required in section (a)(1) is delivered by certified mail or hand delivery to the stamp sales location at which the designee will be purchasing the stamps; and
- (3) Only a person who is not a minor is eligible to be a designee to purchase the stamps.

(b) The written authorization shall continue in effect until written notice of revocation of the authority by the licensee is delivered by certified mail or by hand delivery to the stamp sales location at which the designee has been purchasing the stamps. [Eff 12/16/2000](Auth: HRS §§245-25, 245-42)(Imp: HRS §245-25)

HRS §245-26 §18-245-10 Deferred-payment purchase. Every licensee desiring to purchase stamps on a deferred-payment basis may apply to the department. Upon receipt of the completed application and the required bond, the department shall give written authorization to the licensee for the amount of deferred-payment purchases. The department shall set the maximum amount of deferred-payment purchases allowed. The maximum amount of deferred-payment purchases allowed shall be the cost of stamps needed for the largest amount of cigarette sales in one month during the preceding twelve months. [Eff 12/16/2000](Auth: HRS §§245-26, 245-27, 245-42) (Imp: HRS §§245-26, 245-27)

HRS §245-27 §18-245-11 Deferred-payment purchase; bonds. (a) Every licensee requesting payment for stamps on a deferred-payment basis shall execute a bond with a surety company licensed in this State in an amount to be determined by the department. The department may increase or reduce the amount of bond at any time, but in no event shall the amount of the bond be greater than one hundred per cent of the maximum amount of deferred-payment purchases allowed.

(b) When a licensee fails to make a timely payment for a deferred-payment purchase, the department may immediately file a claim for execution of the bond with the appropriate surety company. [Eff 12/16/2000](Auth: HRS §§245-27, 245-42)(Imp: HRS §245-27)

HRS §245-24 §18-245-12 Purchase of stamps through a designated bank; method of payment; bonds for returned business checks; accounts at the designated bank. Licensees shall purchase stamps through a bank designated to sell stamps by the department. Licensees may pay for the stamps with cash, certified check, cashiers check or business check. Upon return of a business check for any reason, the licensee shall be assessed a fee as determined by the bank. Upon return of a business check for insufficient funds, the licensee shall be required to execute a bond with a surety company licensed in this State in an amount to be determined by the bank. The designated bank may require licensees purchasing stamps to open an account with the bank unless an account is already established at the bank. [Eff 12/16/2000] (Auth: HRS §§245-24, 245-V)(Imp: 42 HRS §245-24)

HRS §245-34 §18-245-13 Transfer of stamps. Licensees may not sell, exchange, or transfer unaffixed stamps without prior written approval by the department. The request for written approval shall be accompanied by documentation signed by both the party transferring the stamps and the party receiving the stamps with the following information:

- (1) Names and addresses of the parties transferring the stamps and receiving the stamps;
- (2) Serial numbers of the stamps involved;
- (3) Number of stamps involved and dollar amount of the stamps involved;
- (4) Reason for the transfer; and
- (5) Any other information the department may require. [Eff 12/16/2000](Auth: HRS §§245-34, 245-42)(Imp: HRS §245-34)

HRS §245-41 §18-245-14 Reporting requirement for missing shipments of stamped cigarettes and damaged or otherwise unusable stamps. Licensees must report to the department of the attorney general, information on missing shipments of stamped cigarettes and damaged stamps or stamps which have become unusable, within twenty-four hours of the discovery that the shipments are missing or the stamps have been damaged or have become unusable. Licensees shall report the following information to the department of the attorney general on missing shipments of stamped cigarettes and damaged or otherwise unusable stamps:

- (1) Name and address of licensee;
- (2) Serial numbers of the stamps involved;

- (3) Number of stamps involved and dollar amount of the stamps involved;
- (4) In the case of missing shipments, the name and address of the entity to whom the stamped cigarettes were shipped to; and
- (5) Any other information the department of the attorney general may require. [Eff 12/16/2000](Auth: HRS §245-42)(Imp: HRS §§245-41, 245-42)